

IN THE HIGH COURT OF SINDH, KARACHI

Cr. Bail Application No.272 of 2020

APPLICANTS : Abdullah S/o Mehmood Raza and
Abdul Basit S/o Noor Muhammad,
through Mr. Saqib Ali Awan, Advocate.

RESPONDENT : The State,
through Ms. Abida Parveen Channar,
Special Prosectuor, ANF.

Hearing on : 13.03.2020.

Decided on : 13.03.2020.

ORDER

ABDUL MOBEEN LAKHO, J.- Having remained unsuccessful in obtaining their release on bail from the trial Court in case Crime No.14 of 2019 registered at police station ANF Korangi, Karachi, under Section 6/9-C of CNS Act, 1997. Now the applicants are seeking for their post arrest bail in the said crime through instant bail application.

2. Brief facts of the prosecution case as per FIR that on 22.4.2019, at about 1300 hours, Inspector/SHO Ghulam Mustafa Zardari complainant of police station ANF Muhammad Ali Society, Korangi, Karachi lodged FIR and alleged therein that when he was present at police station, spy informer informed that narcotic smugglers namely Abdul Basit and Abdullah will deliver the huge quantity of narcotics to their special customer in between 10:00 to 11:00 hours at Dawood Chowrangi, Landhi, Karachi and in case of immediate action arrest of the accused and recovery were sure, therefore on such information he alongwith his subordinate staff and spy, vide entry No.7 at about 0930 hours left PS reached at the pointed place and on pointation of spy informer saw that two persons were standing at Al-Rehmat Eye Hospital and after waiting 30 minutes when they were going back, complainant party apprehended them. The

people available there were asked to act as witness but they excused, therefore, HC Muhammad Ilyas & PC Fahim nominated mashirs inquired about their names and they disclosed their names to be Abdul Basit S/o Noor Muhammad and Abdullah S/o Mehmood Raza and from personal search of accused Abdul Basit one packet wrapped with solution tape from fold of his shalwar containing Methamphetamine Ice Crystal quantifying 1 Kilograms weighed on digital scale was recovered and on further search original CNIC, cash Rs.1500/- and a mobile phone alongwith sim were sealed at the spot and sent to analyst for chemical compositions. Likewise from the possession of accused Abdullah one packet wrapped with solution tape from fold of his shalwar containing Methamphetamine Ice Crystal weighing 1 kilogram weighed on digital scale was recovered and upon further search one colour copy of CNIC, cash Rs.1000/- and a mobile phone alongwith sim were sealed at the spot and sent for analysis of chemical examiner. Accused persons were arrested according to law and memo of arrest and recovery prepared at the spot. Upon returning back at P.S. alongwith accused and secured property, instant FIR was lodged.

3. Mr. Saqib Ali Awan, the learned counsel for the applicants contended that applicants are innocent and has been falsely implicated in this case; that there is violation of Section 103 Cr.P.C. as no private person was associated as witness from the place of occurrence though it being a thickly populated area; that there is inordinate delay of three hours in lodging of FIR; that there is nothing in FIR and memo of arrest and recovery that recovered property was wrapped in solution tape/polythene bag; that real facts are that complainant had demanded illegal gratification from the applicants and as the applicants refused to fulfill such demand, complainant foisted such narcotics upon them; that investigation has been completed and applicants are no more

required for the purpose of investigation, hence, prayed for grant of bail.

4. Ms. Abida Parveen Channar, learned Special Prosecutor, ANF opposed this bail application on the ground that both accused persons were arrested at the spot red handed and from each accused recovered 1/1 kilograms Methamphetamine Ice Crystal and this is not an ordinary drug like other narcotic and the offence of the accused is against the society. During the course of arguments, she has also placed on record the report of Analytical Testing of Laboratory of Methamphetamine, which is positive and prayed that this bail application may be dismissed.

5. I have heard the learned counsel for the parties at length and have gone through the case papers so made available before me.

6. The applicants/accused are nominated in FIR with specific allegations attributed against them. Both the accused were arrested on spot and possession of 1/1 kilogram Methamphetamine Ice Crystal was effected from each accused. No enmity, ill-will or grudge has been alleged against the prosecution witnesses; on the contrary, sufficient material has brought by the prosecution on the record including report of Chemical Examiner which was sent to the lab the very next day and the report is positive which is enough material to dismiss the bail. The recovery was witnesses by the police officials and according to the pronouncements of the Hon'ble Supreme Court police officials are as good a witness as any other person.

7. These types of activity are becoming more rampant day by day. The larger interest of the public and State demands that in case of huge recovery of narcotics, the discretion under Section 497 of the Code of Criminal Procedure should not be exercised liberally. The Apex Court

in the case of *The State v. Javed Khan* (2010 SCMR 1989) has made the following observations in a narcotic case:-

"S. 497(5)---Control of Narcotic Substances Act (XXV of 1997), Ss. 9(c) & 51(1)---Recovery of narcotic substances--- Bail, cancellation of---Death sentence--- Narcotic substance weighing 5-1/2 kilograms was recovered from accused who was granted bail by High Court---Validity--- Case of accused did not fall within prohibitory clause of S. 497 Cr.P.C., as the offence was covered by section 9(c) of Control of Narcotic Substances Act, 1997, providing for various sentences, which not only fell within prohibitory clause of S.497, Cr.P.C. but also attracted the bar contained in section 51(1) of Control of Narcotic Substances Act, 1997, which was specifically made applicable to those offences which provided for punishment of death sentence--- Approach of High Court releasing accused on bail was arbitrary, without application of mind and contrary to settled principles of law thus unsustainable---Supreme Court converted petition for leave to appeal into appeal and order admitting accused on bail was set aside and bail application before High Court was dismissed."

8. Similar view has been taken by this Court in the case of *Ayaz Pathan v. State* (2013 YLR 2560), wherein the learned Bench while dismissing the bail application in a case registered under Section 9(c) of CNSA has made the following observations:-

"S. 497---Control of Narcotic Substances Act (XXV of 1997), Ss.6, 9(c), 14, 15, 25 & 29---Possessing, trafficking of narcotics, and aiding, abetting and associating in narcotic offences---Bail, refusal of--- Prosecution witnesses, had no enmity whatsoever, with accused to foist such a huge quantity of nine Kilograms of charas upon him---Chemical Examiner's report regarding recovered charas was found positive-- - Substance recovered from accused, was proved to be charas--Prosecution, in circumstances, had discharged its initial onus while proving that the substance recovered from accused was contraband charas---Sufficient material was available on record, which had shown that accused was found sitting on front seat of the vehicle, and he was found responsible for transportation of narcotics---Defence plea that the narcotic was not recovered from possession of accused, was not true---Alleged offence was heinous one falling within prohibited clause of S.497, Cr.P.C.-- - Contention that respectable inhabitants of the

locality, were not associated as witness or mashir, was not attracted in view of S.25 of the Control of Narcotic Substances Act, 1997---Applicability of S.103, Cr.P.C., had been excluded in the cases of recovery of narcotics---Evidence of Police Officials, was as good as of any other public witness, in absence of any malice or mala fide---Defence plea raised by accused, required deeper appreciation of evidence, which was not admissible at bail stage--- Under provisions of section 29 of Control of Narcotic Substances Act, 1997 presumption would be that a person who was found in possession of narcotics, had committed offence, unless otherwise proved---Reasonable grounds, prima facie, did exist to believe the involvement of accused in the offence alleged against him---Bail application having no merits for consideration, was dismissed, in circumstances."

9. The Lahore High Court in the case of Mst. Rafaqat Bibi v. State (2011 MLD 1070) has also held that:-

"S.497---Control of Narcotic Substances Act (XXV of 1997), S.51---Bail---Section 497, Cr.P.C. not applicable to offences under the Control of Narcotic Substances Act, 1997---Section 51 of the Control of Narcotic Substances Act, 1997, has ousted the implication of S.497, Cr.P.C. from the cases relating to narcotics punishable with death---Said S.51 relates to the Control of Narcotic Substances Act, 1997, which is a special law dealing only with the offences relating to narcotic drugs, psychotropic substances and to control the production, processing and trafficking of the same, whereas Criminal Procedure Code, 1898, is a general law and special law has always precedence over the general law--- When the law makers provide some special provision in the Statute to bar the jurisdiction of Special Court established under the said enactment, due weight is to be given to such special provision of law as against general principles governing such cases, when accused approaches the Special Court or the High Court."

10. It is settled that for deciding the bail application the court has to observe the tentative assessment and deeper appreciation of evidence is not required and it will not be fair to go into discussion about the merits of the case at this juncture.

11. In view of whatever mentioned above, I reached at the irresistible conclusion that the applicants are not entitled to grant of bail. Consequently, the instant bail applications are dismissed.

12. Before parting, it needs not to make clarification that the observations recorded above, being necessary for disposal of the instant bail application, are tentative in nature, therefore, the trial court shall not be influenced in any manner whatsoever.

13. These are the reasons of my short order dated 13.03.2020.

This Criminal Bail Application stands dismissed in the same terms.

JUDGE